Qwest.

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March 18, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 12th St., SW, TWA-325
Washington, DC 20554

Re: Further Notice of Proposed Rulemaking In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129

Dear Ms. Salas:

Attached for filing in the referenced docket, and on behalf of Qwest Communications Corporation ("Qwest"), are the original and four copies of Qwest's comments.

We have forwarded a 3.5" diskette containing the comments in WordPerfect 5.1 format to Ms. Kimberly Parker of the Common Carrier Bureau. Also, we have forwarded a paper copy and a 3.5" diskette containing the comments to International Transcription Services.

Kindly date-stamp the additional copy of this letter and return it to the awaiting messenger. If you have any questions, please contact me.

Respectfully submitted,

Jane Kunka
Manager, Public Policy

Enclosures

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	

COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Genevieve Morelli
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Arlington, VA 22203

March 18, 1999

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Qwest applauds the Commission for recently implementing bold new steps to reduce instances of unauthorized carrier changes in the telecommunications market. Qwest believes that a number of these new rules will go a long way toward protecting consumers and improving customer satisfaction with the carrier change process. These new rules, however, do not come without costs. In some instances, carriers will have to radically overhaul their marketing and network databases – at significant expense – in order to comply with the new regulations.

Rather than wait and see whether the new rules are sufficient to prevent continued widespread slamming, the *Further Notice of Proposed Rulemaking* seeks to implement additional restrictions now, or in the very near future. For the most part, Qwest submits that the Commission should allow the industry to digest and conform to its most recent rule changes before barreling headstrong into these new forms of regulation. Doing so will ensure that the Commission's slamming-related policies remain coherent, as well as strike a crucial balance between protecting consumers and providing marketing freedom to carriers.

Notwithstanding this fact, a few of the *FNPRM's* proposals would go a long way toward ensuring that the new slamming rules are equitably and efficiently administered. Specifically, as described in further detail below, Qwest believes that the Commission should define the term "subscriber" broadly to permit flexibility in carrier changes and protect those carriers who have relied on customer representations. Qwest further believes that, as has been proposed in the past, the Commission should move toward the

establishment of an independent third party to effectuate preferred carrier changes and freezes.

Qwest's views on the proposals contained in the *FNPRM* can be summarized as follows: The Commission should

- refrain from authorizing punitive payments for carrier changes;
- avoid implementing experimental and costly CIC options for resellers;
- affirm the validity of three-way calling and automated verification systems, and not dictate the content of verification scripts;
- forebear from regulating Internet LOAs in any way;
- define the term "subscriber" broadly to permit flexibility in carrier changes;
- refrain from adopting reporting requirements concerning slamming;
- avoid imposing a registration requirement on carriers; and
- move toward the adoption of a requirement that all preferred carrier changes and freezes be implemented by a neutral third party.

Before the
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In the Matter of	)	
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Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)))	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)))	

COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Qwest Communications Corporation ("Qwest") hereby submits its comments on the Federal Communication Commission's ("FCC's" or "Commission's") *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.[1]

As explained in detail below, the Commission should (1) refrain from authorizing punitive payments for carrier changes; (2) avoid implementing experimental and costly carrier identification code ("CIC") options for resellers; (3) affirm the validity of three-way calling and automated verification systems, and not dictate the content of verification scripts; (4) forebear from regulating Internet letters of agency ("LOAs") in any way; (5) define the term "subscriber" broadly to permit flexibility in carrier changes; (6) refrain from adopting reporting requirements concerning slamming; (7) avoid imposing a

[1] *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, *Further Notice of Proposed Rulemaking* (rel. Dec. 23, 1998) (*"FNPRM"*).

registration requirement on carriers; and (8) move toward the adoption of a requirement that all preferred carrier changes and freezes be implemented by a neutral third party.

INTRODUCTION

Qwest is a global multimedia communications company and one of the fastest growing companies in America. Qwest currently is in the process of building a high-capacity fiber optic network that will enable its customers to seamlessly exchange multimedia content – including images, data and voice – just as easily as traditional telephone networks now carry voice communications. Qwest's high-capacity network in the United States is scheduled to be completed in June of this year; however, the company has been providing both facilities-based and resold intrastate and interstate toll and long distance services to customers throughout the country since the late 1980s.[2]

Qwest applauds the Commission for recently implementing bold new steps to reduce instances of unauthorized carrier changes in the telecommunications market.[3] Qwest believes that a number of these new rules will go a long way toward protecting consumers and improving customer satisfaction with the carrier change process. Qwest has long supported a policy goal of zero tolerance for slamming, and believes that the Commission was justified in amending its earlier carrier change rules to protect consumers in the marketplace for telecommunication services.

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[2] Qwest was known as the "Southern Pacific Telecommunications Company" when it offered services in the 1980s.

[3] *See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, *Second Report and Order* (rel. Dec. 23, 1998) (*"Second Report and Order"*).

These new rules, however, do not come without costs. In some instances, carriers will have to radically overhaul their marketing and network databases in order to comply with the new regulations. Carriers will also have to spend significant resources on educating consumers about their rights under the new system.

A great deal of time, thought and energy has been spent on the establishment of the Commission's new slamming rules, and an equal amount of time and effort is already being spent by carriers conforming to them. Some of the Commission's new rules will go into effect on April 27, 1999; however, most of the major changes pertaining to slamming will not become effective until May 17, 1999. This effective date may be deferred even further if the industry agrees upon a more efficient way of effectuating the goals of the *Second Report and Order*. It will then take several months for carriers to streamline their operations and for consumers to become educated about their rights. As a result, the fruits of the Commission's labors will not likely be realized until many months after the new slamming rules have been in effect.

Rather than wait and see whether the new rules are sufficient to prevent continued widespread slamming, the *FNPRM* proposes to implement additional restrictions now, or in the very near future. As described in further detail below, these proposed changes range from requiring carriers to pay punitive charges for incidents of slamming, to implementing experimental and costly CIC alternatives for resellers, to curtailing the methods by which carriers can verify preferred carrier changes, to regulating the use of the Internet for the ordering of carrier changes, to requiring carriers to register with the Commission and file reports on all slamming-related allegations.

For the most part, Qwest submits that the Commission should allow the industry to digest and conform to its most recent rule changes before barreling headstrong into these new forms of regulation. Doing so will ensure that the Commission's slamming-related policies remain coherent, as well as strike a crucial balance between protecting consumers and providing marketing freedom to carriers.

Notwithstanding this fact, a few of the *FNPRM's* proposals would go a long way toward ensuring that the new slamming rules are equitably and efficiently administered. Specifically, as described in further detail below, Qwest believes that the Commission should define the term "subscriber" broadly to permit flexibility in carrier changes and protect those carriers who have relied on customer representations. Qwest further believes that, as has been proposed in the past, the Commission should move toward the establishment of an independent third party to effectuate preferred carrier changes and freezes. This will ensure that preferred carrier changes and freezes are executed and removed fairly, without undue discrimination toward non-local exchange carriers.

A comprehensive discussion of the pros and cons of the *FNPRM's* proposed rules follows.

I. THERE IS NO NEED FOR THE COMMISSION TO AUTHORIZE PUNITIVE PAYMENTS BETWEEN CARRIERS AT THIS TIME

The rules adopted by the *Second Report and Order* discourage slamming by punishing offending carriers more severely than the Commission's rules have in the past. In an effort to provide an even greater disincentive to slamming, the *FNPRM* proposes to subject slammers to additional expenses – akin to punitive fines – for their offenses. Specifically, where a subscriber has paid charges to an unauthorized carrier, the *FNPRM* proposes that the authorized carrier be permitted to collect from the unauthorized carrier *double* the amount of charges paid by the subscriber during the first 30 days after the unauthorized change.[4] According to the *FNPRM*, this would enable the authorized carrier to provide a complete refund to the customer, as well as retain an equal amount for itself.[5]

In situations where a subscriber has not paid charges to an unauthorized carrier, the *FNPRM* proposes to permit the authorized carrier to collect from the unauthorized carrier the amount that would have been billed to the subscriber during the first 30 days after the unauthorized change.[6] This too would punish the unauthorized carrier and enable the authorized carrier to receive payments to which it would have been entitled had the slam not occurred. The *FNPRM* takes the position that it would be appropriate to impose these penalties to provide unauthorized carriers with further disincentives to engage in slamming.[7]

Although well meaning, these proposed new penalties would only add to the administrative burden being borne by legitimate carriers as a result of the Commission's new slamming rules. In the *Second Report and Order*, the Commission created a complex regulatory system by which carriers are required to track charges, suspend billing, transfer payments, and generally adhere to the myriad of new regulatory restrictions to protect consumers and correct incidents of slamming. Requiring carriers to

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4 *FNPRM* at ¶ 141. Under the Commission's new slamming rules, charges incurred by the customer from a slammer after this 30 day period has ended must be paid to the authorized carrier after being re-rated. *See id.* at ¶ 23.

5 *Id.* at ¶ 141.

6 *Id.* at ¶ 142.

7 *Id.* at ¶ 143.

calculate and exchange what amount to punitive payments will only serve to add an additional layer of complexity to the already cumbersome system of reimbursements and transfer payments that will soon exist. If, after *Second Report and Order* has been implemented, the Commission believes that additional disincentives to slamming are needed, it may wish to look more closely at this proposal. For now, however, any mechanism that will complicate the already complex system of transfer payments and reimbursements should be rejected.

The *FNPRM's* proposal is also flawed because it is probable that legitimate carriers will often not be able to collect payments from rogue and other fly-by-night offenders. Unscrupulous carriers, who have much to gain and little to lose by slamming, would likely avoid making punitive payments for as long as possible to maintain their cash flow. In fact, based on the poor track records of many of these carriers (*e.g.*, many have declared bankruptcy or have disappeared altogether), it is questionable whether they will ever make punitive payments. Legitimate carriers who experience occasional incidents of slamming due to software glitches, rogue agents and the like will therefore be paying out money on occasion but will never recover funds owed to them as a result of having their customers slammed by unscrupulous carriers. This would lead to an imbalance in the application of the *FNPRM's* rules and should be avoided.

II. THE *FNPRM'S* RESELLER CIC CODE PROPOSALS WOULD CREATE UNNECESSARY COSTS AND NOT FULLY SOLVE THE PREFERRED CARRIER FREEZE PROBLEM

The *FNPRM* seeks comment on whether switchless resellers should be required to have their own CICs or some other identifier to distinguish them from their underlying facilities-based carriers.[8] According to the Commission, this would help prevent "soft slamming," as well as ensure that carriers are not misidentified after incidents of slamming occur.[9]

Qwest recognizes that soft slamming is a problem because it enables carriers to bypass preferred carrier freezes that are ordered, provisioned and enforced by the local exchange carrier. The *FNPRM* offers three ways to overcome the soft slamming and misidentification problem: (1) require each reseller to obtain its own CIC; (2) require each reseller to be associated with a "pseudo-CIC" (*i.e.,* digits appended to the underlying facilities-based carrier's CIC identifying the reseller); or (3) require underlying facilities-based carriers to modify their systems to prevent unauthorized changes from occurring if a subscriber has a freeze on the account, as well as allow identification of resellers on the consumer's bill.[10]

As explained more fully below, each of these proposals would impose significant costs on at least one group of carriers, and distort the market for reseller services. More importantly, none of the *FNPRM's* proposals would effectively wrest control of preferred carrier freezes away from the local exchange carrier. This is one of the most pressing problems facing carriers – once the Regional Bell Operating Companies ("RBOCs") are permitted to enter the long distance market, they will be able to control the preferred carrier freezes of customers of their competitors. To avoid incidents of slamming, the

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8 *Id.* at ¶ 149.

9 *Id.* at ¶ 145.

10 *Id.* at ¶ 149.

Commission should establish a neutral third party vendor to monitor and enforce preferred carrier changes and freezes.[11]

A. Require Resellers to Obtain Individual CICs

Requiring resellers to obtain individual CICs would saddle them with significant costs and ultimately reduce the number of resellers that are able to service the telecommunications marketplace. While the *FNPRM* correctly notes that removing the Feature Group D access requirement would reduce the reseller cost of obtaining a CIC, resellers would still need to purchase "translation access," or the ability of the local exchange carriers ("LECs") to route subscriber calls to the resellers even though the facilities used to route those calls belong to the facilities-based carrier.[12] Purchasing translation access alone would increase CIC processing costs for LECs, facilities-based carriers, and resellers. LECs and facilities-based carriers will then likely pass through their costs to resellers, compounding the expenses resellers will have to pay. Imposing such costs on resellers, who generally allocate their revenue to marketing expenses, would harm them severely and could lead to pricing many of them out of the market.

Underlying facilities-based carriers also rely on resellers, and would both lose revenue and incur significant expenses if resellers were required to obtain their own CICs. For instance, many carriers derive a significant portion of their revenue from resold services. These revenues, in turn, are used to upgrade existing facilities and build

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11 For a more complete discussion of the neutral third party vendor proposal, see Section VIII, *infra*.

12 *FNPRM* at ¶ 154.

new ones. A reduction in the number of resellers nationwide would deplete this revenue source for facilities-based carriers and ultimately slow the build-out of their networks. Facilities-based carriers would also have to implement significant changes to their Customer Account Record Exchange ("CARE") systems to make them capable of processing multiple CICs rather than just one, which is how they are configured today. This would create added expenses for facilities-based carriers which, if passed through to the reseller, would then require the underlying carrier to undergo the administrative burden of amending its pricing standards.

B. Require the Use of "Pseudo-CICs" for Resellers

Requiring resellers to use pseudo-CICs would be a slightly better alternative, but would still impose significant costs on LECs and underlying facilities-based carriers. As explained in the *FNPRM*, the term "pseudo-CIC" refers to the creation of a coded suffix that follows a facilities-based carrier's CIC.[13] Under this proposal, a facilities-based carrier would assign a three or four digit suffix to each reseller that could be used to identify the reseller on the customer's bill.

Unlike the Commission's first proposal, requiring pseudo-CICs would probably not cost resellers very much. However, like any major change to the billing process, it would force facilities-based interexchange carriers to reconfigure their CARE systems and production databases. It would also impose significant costs on LECs and other entities who provide billing and collection services to resellers.[14] These costs are

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[13] *Id.* at ¶ 157.

[14] *Id.* at ¶ 159.

significant and would hurt the already small margins of resellers when passed through to them.

C. Requiring Facilities-Based Carriers to Modify Their Systems

Under option three, facilities-based carriers would be required to modify their systems so that preferred carrier freezes could be ordered for resellers, and so consumers could identify resellers on their bills. While this option would reduce many of the costs that would otherwise be incurred by resellers and LECs under the *FNPRM's* other two proposals, it would continue to saddle underlying facilities-based carriers with the expense of modifying their networks to resolve soft slamming and misidentification problems.

Option three would also do little to resolve the most pressing problem facing the long distance industry today: LEC control of preferred carrier freezes. Presently, all preferred carrier freezes are ordered and provisioned through the LEC. While this process worked fairly well when the RBOCs were barred from the interLATA market, RBOC entry into long distance will destroy the neutrality with which preferred carrier freezes have been implemented. Though option three would enable underlying facilities-based carriers to implement preferred carrier freezes for resellers of their own service, the majority of end users (who do not purchase resold service) would still have to rely on the RBOC or LEC for this function. Option three would therefore only protect a small margin of users.

The best way to maintain equality among carriers and ensure that customers can change service providers, as well as order and remove preferred carrier freezes, is to establish a neutral implementing agency. This neutral third party agency would be responsible for requesting and ordering preferred carrier freezes, and would have to be queried and give its approval each time a carrier change is ordered to determine if a freeze is in place. The Commission should therefore reject the *FNPRM's* costly and complex reseller CIC proposals in favor of a simpler system involving independent third party implementation of preferred carrier changes and freezes.

III. THE COMMISSION SHOULD AFFIRM THE VALIDITY OF THREE-WAY CALLING AND AUTOMATED SYSTEMS, AND NOT DICTATE THE CONTENT OF VERIFICATION SCRIPTS

The *FNPRM* tentatively concludes that, based on the number and breadth of comments received seeking clarification of the independent third party verification alternative, the Commission should revise its rules pertaining to this option.[15] In lieu of proposing specific revisions, however, the Commission seeks general comment on how its independent third party verification rules should, if at all, be clarified or changed.[16]

Qwest agrees that the Commission should clarify the methods by which preferred carrier changes can be verified; however, as explained in further detail below, the Commission should proceed cautiously if it implements any changes to preserve the ability of carriers to market and sell their services in original and innovative ways.

A. Independent Verification Through Three-Way Calling

The *FNPRM* seeks comment on a proposal made by the National Association of Attorneys General ("NAAG") to prohibit three-way calling between the carrier, its new

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15 *Id.* at ¶ 165.

16 *See id.* at ¶¶ 165-168.

subscriber, and the independent third-party verifier.[17] NAAG argues that a three-way verification call initiated by the carrier is not truly independent because the subscriber may remain under the influence of the carrier's telemarketer during the verification process.[18] As explained more fully below, NAAG's proposal fails to acknowledge precautions already in place to curtail telemarketer involvement in the verification process, and would impose unneeded barriers to the third party verification process.

Qwest is a user of three-way calling for independent third party verification. Upon signing-up a new customer, Qwest's sales force connects that customer to one of three independent vendors using three-way calling to confirm that the customer indeed wishes to change his or her service. Before transferring the call, however, the Qwest sales representative tells the customer that he or she will not be able to available to answer any questions after the call is transferred, and that the customer will have to call back if that customer wishes to later speak to a Qwest representative. Upon transferring the call, the Qwest sales representative may (but not always) stay on the line, usually to exchange information with the third party vendor *after* the customer has been instructed to hang up and the verification process is complete. During the entire verification process, the Qwest sales representative stays silent. To ensure the independence of the third party verifier, Qwest has specifically instructed its third party vendors to terminate any verification during which a Qwest sales representative speaks.

Permitting carriers to employ three-way calling for third party verification is essential to maintaining a robust and competitive marketplace for toll and long distance

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17 *Id.* at ¶ 166.

services. As noted above, three-way calling enables the carrier to remain on the line to exchange information with the third party verifier once the verification process is complete and the customer has been disconnected from the call. Requiring carriers to drop off the call once the customer is connected to the third party verifier would create inefficiencies, and, in any event, may not always be technically feasible because the carrier often serves as the link connecting the calls. At the very least, therefore, carriers should be given the option of remaining on the line and staying silent during the third party verification process until the customer drops off the call.

Three-way calling is also important because the alternative, having the third party verifier contact the customer or having the customer call the third party vendor, would be both inefficient and time consuming for the customer. The third party verifier may not be able to reach the customer on a timely basis, and the customer may forget, or be unaware of the important need to contact the third party vendor. The *FNPRM* explicitly acknowledges this by stating that "using a three-way call is often the most efficient means by which to accomplish third party verification."[19] The Commission should heed this observation and affirm that three-way calling in no way impugns the independence of the third party verifier.

B. Automated Third Party Verification Systems

In addition to using three-way calling for live operator independent third party verification, Qwest also uses an automated third party verification system. Automated

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[18] *Id.*

[19] *Id.*

third party verification systems present an important alternative to live third party verification scripts and should be preserved by the Commission.

A carrier that employs an automated verification system plays pre-recorded questions confirming a customer's requested carrier change and records that customer's responses. Qwest records both the pre-recorded questions asked and the answers provided by its customers to ensure that its automated confirmations are clear. Automated verification systems are important because they enable carriers to obtain independent verification of a customer's requested carrier change at a fraction of the cost of a live third party verifier. This ensures that low barriers to entry are maintained in the market for toll services.

There is no reason for the Commission to rule that automated third party verification systems are inadequate. Automated systems ensure that the questions asked are uniform and straightforward, and they enable carriers to keep clear records of their customers' verifications. In fact, Qwest's third party vendors review and transcribe all automated verifications to ensure that the answers provided by Qwest's customers are clear. Automated systems comply with all of the Commission's current rules for third party verifications (*i.e.,* they are operated by an independent third party, kept in a separate physical location from the carrier, etc.), and are therefore an important, valid alternative for all carriers.

C. Prescribing the Content of the Third Party Verification

The *FNPRM* seeks comment on the possibility of requiring certain information to be included in all third party verifications.[20] It also seeks comment on any benefits that might be gained from permitting or requiring third party verifiers to provide customers with additional information on, for example, preferred carrier freezes or the carrier change process.

There is no reason for the Commission to regulate the content of third party verifications at this time. Carriers and third party verifiers are aware of the Commission's carrier change requirements and have tailored their verification scripts accordingly. Requiring carriers and third party verifiers to follow a scripted format would impose unnecessary, additional rules on the carrier change process without producing a significant corresponding benefit. It would also detract from each carrier's ability to market and package its product in a unique manner. A carrier whose verifications are unclear will have to account for that if it is accused of slamming. The Commission need not drastically abrogate the flexibility of carriers and third party verifiers merely to achieve this result.

In addition to permitting carriers to determine the content of their customer confirmations, the Commission should confirm that third party verifiers are authorized to provide customers with information on preferred carrier freeze procedures and other similar matters. The success of the Commission's new slamming rules depends largely on consumers being aware of their rights. Permitting third party verifiers to inform consumers about preferred carrier freeze procedures, as well as other technical or

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[20] *Id.* at ¶ 167.

administrative issues will accomplish this without detracting from the independence of the third party verifier. To preserve this independence, the Commission should also confirm that the third party verifier may not answer any questions or volunteer any information that could be construed as "marketing" on behalf of a particular carrier's services.

IV. INTERNET LOAs SHOULD REMAIN FREE FROM GOVERNMENT REGULATION

As explained in the *FNPRM*, many carriers have begun to use the Internet as a marketing tool to acquire customers.[21] Qwest is among those carriers. While still in its nascent stages, the Internet is proving itself to be a safe and efficient method of promoting telecommunications services and signing up new subscribers.[22] The Commission should not do anything that will impede the development or application of the Internet to the carrier change process.

Since its inception, the Internet has been free of Commission regulation. This is among the many reasons for its spectacular growth. Congress and the Commission have repeatedly emphasized their desire to keep the Internet free of government interference. For example, last year, Congress passed the "Internet Tax Freedom Act," which placed a three-year moratorium on all federal, state and local taxes pertaining to Internet access

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21 *Id.* at ¶ 169.

22 *See id.* at ¶ 169.

and E-commerce.[23] Other legislation seeking to reduce or eliminate taxation of Internet services was also introduced in the last Congress.[24]

Similarly, since 1983, the Commission has exempted information service providers ("ISPs") – who provide Internet access – from the payment of access charges[25] because of, among other things, "the potentially detrimental effects on the growth of the still-evolving information services industry" that the imposition of such charges would have.[26] The Commission reaffirmed the ISP exemption as recently as 1997,[27] as has taken many other actions to keep ISPs as free as possible from government regulation.[28]

As recently as last week, Chairman Kennard emphasized that the Internet has become "fastest growing communications tool in the history of the world" in part because

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[23] Internet Tax Freedom Act, included as Titles XI and XII of the Omnibus Appropriations Act of 1998, Pub. L. No. 105-277 (1998).

[24] *See* H.R. 2372, 105th Cong. 1st Sess. (1997) (Internet Protection Act of 1997, the purpose of which was to ensure that development of Internet and interactive computer service is unfettered by federal and state regulation). *See also* 143 Cong. Rec. E513 (daily ed. March 19, 1997) (statement of Rep. Nadler) (arguing that the Internet deserves highest protection from government intrusion); 143 Cong. Rec. S12078 (daily ed. Nov. 8, 1997) (statement of Sen. Abraham) (urging colleagues to fight to ensure that high technology industries, and Internet in particular, remain as free as possible from Government regulation and taxation).

[25] *See In the Matter of MTS and WATS Market Structure, Memorandum Opinion and Order*, 97 FCC 2d 683, 711-22 (1983); *see also In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order,* 3 FCC Rcd 2631 (1988).

[26] *In the Matter of Access Charge Reform, Report and Order,* 12 FCC Rcd 15982, 16132 ¶ 343 (1997).

[27] *See id.* at 16133 ¶ 344, *aff'd sub nom., Southwestern Bell Tel. Co., et al. v. Fed. Communications Comm'n*, 153 F.3d 523 (8th Cir. 1998).

[28] For example, ISPs are under no obligation to contribute to the Universal Service Fund, and are exempt from interconnection obligations, access to persons with disabilities requirements, and sections 201 and 202 duties.

it is unregulated.[29] In his press statement accompanying the Commission's ruling on inter-carrier compensation for ISP-bound traffic last month, Chairman Kennard even promised that the Commission will not regulate the Internet so long as he is chairman.[30]

Despite the Commission's reluctance to regulate the Internet, the *FNPRM* nevertheless seeks comment on the use of the Internet in the carrier change process. Specifically, the *FNPRM* seeks comment on whether a carrier change submitted over the Internet can constitute a valid LOA under the Commission's verification rules.[31] There is no reason to think that it cannot. An LOA transmitted through the Internet is no less valid than one submitted on paper. Although the *FNPRM* is correct to note that an Internet LOA does not contain an actual, written signature, this does not necessarily render the Internet LOA any less reliable. An unscrupulous carrier can forge a customer's signature just as easily as it can submit to itself a counterfeit LOA over the Internet. Internet LOAs are therefore not prone to more abuse than other confirmation methods.[32]

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29 "Remarks by Chairman William E. Kennard Before Legg Mason," Mar. 11, 1999, available at <http://www.fcc.gov/Speeches/Kennard/spwek910.html>.

30 *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98 and 99-68, *Press Statement of Chairman William E. Kennard* (Feb. 25, 1999). As recently as a week ago, Chairman Kennard again emphasized this point: "[a]s long as I'm chairman of the Federal Communications Commission this agency will not regulate the Internet." Jeannine Aversa, "FCC Won't Regulate Internet. Really." *Washington Post*, Mar. 12, 1999, at E1.

31 *FNPRM* at ¶ 171.

32 The Commission's rules do not require additional verification of paper LOAs. Because Internet LOAs are comparable to paper LOAs, there is no reason to treat them differently.

When the Commission prescribed its signature requirement to validate an LOA, it could not have contemplated the important role the Internet now plays in our society. The same is true now with respect to the role the Internet has begun to play in the carrier change process. It is well understood that the Internet is changing the way customers communicate with companies, request information, and order new products and services. In light of the unique role of the Internet in the domestic and global economy, it makes little sense to force existing rules designed for another era on this new paradigm. As indicated above, the Commission's signature requirement does not render written LOAs any more dependable than signature-less Internet LOAs. In the end, carriers will have to account for their conduct when accused of slamming and provide reliable proof of all customer-intended changes.

There is also no reason to require carriers to obtain additional verification information, such as a credit card or social security number, to prove that the person submitting the carrier change over the Internet is in fact the actual subscriber.[33] Requiring additional information will not help protect the consumer unless the carrier is required to verify this information. In other words, requiring a customer to provide, for example, his or her social security number will not accomplish anything unless the carrier takes the time and incurs the cost of confirming separately that the customer's name, telephone number, and social security number all match. This would require the carrier to contact the new customer again, or at the very least check the credit card or social security number against a credit database, creating added costs to an otherwise streamlined and

[33] *See FNPRM* at ¶ 172.

efficient online process. While cross-checking information may assist the carrier in defending itself against a slamming claim, requiring such conduct will increase the cost of using the Internet, thereby defeating the purpose of employing the Internet in the first place. Moreover, such a system would fail to take into account multiple subscribers (*i.e.,* those authorized to make a carrier change) for a single line without becoming too complex and costly.

In addition, despite the dependable security features of most online transactions, customers may still be reluctant to provide credit card and social security information over the Internet to change their long distance service. Requiring carriers to obtain additional information from customers submitting Internet LOAs may therefore create a chilling effect on all Internet carrier change transactions.[34]

The *FNPRM* tentatively concludes that separate Internet LOAs should have to be submitted for changes to intrastate toll and interstate service – in addition to local service, in the future – in order to conform to the Commission's rules. Qwest supports this interpretation and believes that carrier websites can be clarified without explicit government intervention to effectuate this requirement. Customers should also be able to

[34] One easy way of confirming a carrier change would be for the carrier to send the subscriber an e-mail notification that a change in service has been requested. E-commerce pioneers such as Amazon.com and Yahoo!, among others, currently use this method to confirm address, password, and credit card changes for their systems. E-mail notification would enable carriers to confirm changes with their customers with little added transaction costs. This alternative, however, may not always be available as not everyone has an e-mail address. Until Internet LOAs, e-mail addresses, and e-commerce become more ubiquitous, Qwest recommends that the Commission refrain from imposing any confirmation requirements – including e-mail confirmation requirements – on carriers for Internet LOAs.

use the Internet to request or lift preferred carrier freezes without going through a Commission-mandated process.

In sum, there is no evidence that the availability of Internet LOAs is causing an increase in slamming incidents. Internet LOAs are relatively new to the market and are still in their infancy. This is supported by the fact that carriers use different methods and formats for their Internet LOAs.[35] Unless and until there is clear and convincing evidence that Internet LOAs are causing incidents of slamming, the Commission should forebear from regulating in this area.

V. THE COMMISSION SHOULD DEFINE THE TERM "SUBSCRIBER" BROADLY TO PERMIT FLEXIBILITY IN CARRIER CHANGES

Section 258 of the Telecommunications Act and the Commission's rules implementing that provision require carriers to obtain authorization from a subscriber before making a switch.[36] Neither the Act nor the Commission's rules, however, define the term "subscriber" for this purpose. The Commission therefore seeks comment on how this term should be defined (*i.e.,* who should be permitted to make a carrier change).

It is well accepted that the term "subscriber" should not be limited to the individual under whose name the account is listed. Such an interpretation would prevent legitimate household members (for residential accounts) and authorized associates (for business accounts) from validly changing their (of their company's) local, intraLATA toll or interLATA toll carrier. To avoid this result, SBC suggests that the term "subscriber" should include "any person, firm, partnership, corporation, or lawful entity that is

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35 *FNPRM* at ¶ 170.

36 *See* 47 U.S.C. § 258; *FNPRM* at ¶ 176.

authorized to order telecommunications services supplied by a telecommunications service provider."[37] This, according to SBC, will enable carriers to obtain authorization from whomever at the residence or business is authorized to make the purchasing decision.[38]

In its recently-enacted anti-slamming rules, the State of Florida has adopted a similar definition for "subscriber." Specifically, Section 25-4.118(1) of the Florida Administrative Code indicates that, in the residential context, "any person 18 years of age or older within the same household" may authorize a change in service.[39] For business customers, "the person designated as the contact for the local telecommunications company, an officer of the company, or the owner of the company" is authorized to change business service.[40]

Qwest agrees with SBC that the term "subscriber" should be defined broadly. Qwest also agrees with the State of Florida that, in the residential context, requiring an individual at least 18 years of age to make an authorized change is appropriate. Of concern to Qwest, however, is that, regardless of which approach is taken, there is no way for a carrier to confirm that the person with whom the carrier is dealing is truly among those authorized to make the switch. Like all carriers, Qwest must rely on the representations of its potential customers and is limited in how it can confirm them. Even if it asks, Qwest has no way of *knowing* whether the person on the other end of the line is

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37 *See id.* at ¶ 176.

38 *See id.* at ¶ 176.

39 FLA. ADMIN. CODE. r. 25-4.118(1) (1999).

40 FLA. ADMIN. CODE. r. 25-4.118(1) (1999).

indeed a "household member," or whether the person is "authorized to make carrier-related decisions" with respect to a business. In light of this fact, the Commission's rules should clearly state that carriers who take precautionary measures and inquire as to the authority of their subscribers be insulated from slamming claims.

VI. THE COMMISSION SHOULD NOT ADOPT A REPORTING REQUIREMENT FOR SLAMMING

In an effort to monitor incidents of slamming and stem the tide of unauthorized changes, the *FNPRM* seeks comment on whether the Commission should require each carrier "to submit a report on the number of complaints of unauthorized changes that are submitted to each carrier by its subscribers."[41] As explained more fully below, any such reporting requirement would be both misleading and unduly burdensome to carriers and should not be required.

First of all, based on the *FNPRM*'s proposal, it is unclear whether a carrier would be submitting complaints concerning allegations of slamming against it, or allegations of slamming made by its customers against other carriers. Regardless of how this is clarified, the mere reporting of slamming complaints, without information concerning the accuracy of the allegations or whether the slams (if they in fact occurred) were quickly corrected, would not provide the Commission with a clear picture of the slamming problem. Unless and until the Commission resolves the CIC code issue, facilities-based carriers may also be unfairly blamed for the slamming practices of some resellers.

Considering the deregulatory tact the Commission has taken with respect to today's competitive long distance telecommunications marketplace, the last thing the

Commission should do is create new and costly reporting requirements for carriers that, until now, have been increasingly deregulated.[42] The Commission should be encouraging carriers – especially small carriers – to devote their resources to preventing slamming. Forcing carriers to spend valuable time and energy tracking and reporting on incidents of slamming will detract from this effort.

VII. THE COMMISSION SHOULD NOT IMPOSE A REGISTRATION REQUIREMENT ON CARRIERS

Another proposal raised in the *FNPRM* intended to reduce incidents of slamming is to impose a federal registration requirement on carriers who provide intrastate toll and interstate telecommunications services.[43] While Qwest could certainly comply with such a requirement, we believe that, like the Commission's reporting requirement proposal, a registration requirement would impose unnecessary costs on carriers and would do little to alleviate the slamming problem.

The *FNPRM* seeks comment on what information the registration statement should contain, if required.[44] Qwest submits that, if the Commission is adamant about implementing a registration requirement, the same general information submitted to state

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41 *FNPRM* at ¶ 179.

42 An industry proposal seeking to implement a third party administrator to control and rectify preferred carrier changes will soon be presented to the Commission. *See* Section VIII, *infra*. Included in this proposal will be information that the third party administrator will agree to provide routinely to the Commission. If adopted, the industry proposal will provide the Commission with relevant slamming information for those who rely on the third party administrator without imposing a significant added burden on carriers.

43 *FNPRM* at ¶ 180.

44 *Id.*

agencies for obtaining competitive local exchange carrier authority could be submitted to the Commission.[45]

The problem with requiring a registration statement, however, is that the same carriers who commit fraud through slamming are likely to submit fraudulent information, or information otherwise outdated or not easily verifiable, to the Commission. The only thing requiring a registration statement would accomplish, therefore, is additional work for legitimate carriers, and a new means of defrauding the Commission for unscrupulous carriers.

If the Commission nonetheless requires all carriers to file registration statements, carriers who fail to file statements should not, as proposed, have their authority revoked or suspended. Such a punishment would hardly fit the crime. A carrier who fails to provide certain information due to a mistake or error should be given an opportunity to rectify its filing. If, after sufficient notice has been given, that carrier still fails to register properly, then it should be subject to a fine. Only carriers who patently engage in fraudulent conduct should have their authority revoked.

Finally, any registration requirement should, if adopted, not include an affirmative duty on the part of a facilities-based carrier to confirm that its reseller customers have filed registration statements.[46] Such a requirement would unfairly impose upon the facilities-based carrier the to duty to enforce a Commission regulation. In addition,

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[45] This information generally includes the name and address of the carrier, contact information, a list of officers and directors, a statement indicating that these officers and directors have no prior history of committing fraud, and verification of the carrier's financial solvency.

[46] *See FNPRM* at ¶ 183.

facilities-based carriers would be responsible for tracking the regulatory status of their customers, thereby requiring them to devote valuable resources to this endeavor.

VIII. A NEUTRAL THIRD PARTY ADMINISTRATOR FOR PREFERRED CARRIER CHANGES AND FREEZES IS ESSENTIAL TO A TRULY COMPETITIVE TELECOMMUNICATIONS MARKETPLACE

Because of the complexities created by a growing market for telecommunications services, including the conflicts of interest that may arise for the RBOCs as they begin to enter the long distance market, the *FNPRM* seeks comment on potential industry solutions to implementing, among other things, preferred carrier changes and preferred carrier freezes.[47]

Qwest agrees that the current system of LEC-controlled carrier changes and freezes should be changed. Under the status quo, LECs have the ability to discriminate in favor of their own interexchange ("IXC") affiliates when implementing preferred carrier changes or freezes. Additionally, LECs are able to maintain an information advantage over their competitors, as they have the overwhelming majority of information on which customers have changed, and are more likely to change, service. This information can be used to target subscribers that will likely switch to the LEC affiliate. Without a third party system in place, no one – absolutely no one – will be able to monitor LEC-implemented preferred carrier changes and freezes until they have been made. This will inflict immeasurable damage on existing IXCs and should not be permitted.

For these reasons, the Commission should expeditiously issue a *Notice of Proposed Rulemaking* ("NPRM") to address this issue in detail. Because of the technical

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47 *See id.*

and administrative complexities involved in setting up a neutral third party administrator, this NPRM should be separate from the Commission's current inquiry. It is especially important that the Commission address this issue *before* any of the RBOCs is permitted to enter the long distance market. Once RBOCs are permitted to enter the long distance market, the chance of establishing a competitively neutral system of preferred carrier changes and freezes from the start will be lost.

On a related matter, Qwest is among a large group of telecommunication providers that will soon present to the Commission a comprehensive proposal for establishing a neutral third party administrator ("TPA") to handle all slamming-related complaints. Under this proposal, the TPA will provide customers with a single point of contact to quickly resolve slamming allegations, independently determine carrier compliance with the Commission's verification procedures, compensate customers for their inconvenience, and administer carrier-to-carrier liability. Notably, the TPA proposal will only cover incidents of slamming and will not address the administration of preferred carrier changes and freezes. For this reason, it is vital that the Commission issue a NPRM to address this issue.

CONCLUSION

For the reasons stated above, the Commission should (1) refrain from authorizing punitive payments for carrier changes; (2) avoid implementing experimental and costly CIC options for resellers; (3) affirm the validity of three-way calling and automated verification systems, and not dictate the content of verification scripts; (4) forebear from regulating Internet LOAs in any way; (5) define the term "subscriber" broadly to permit flexibility in carrier changes; (6) refrain from adopting reporting requirements concerning slamming; (7) avoid imposing a registration requirement on carriers; and (8) require all preferred carrier changes and freezes to be implemented by a neutral third party.

Respectfully submitted,

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March 18, 1999

CERTIFICATE OF SERVICE

I, Douglas C. Nelson, hereby certify that on this 18th day of March, 1999, a copy of the foregoing Comments of Qwest Communications Corporation was served on the parties listed below via hand delivery (indicated by "*") or first-class mail, postage pre-paid.

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